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ECONOMIC AND ENVIRONMENTAL QUESTIONS: FOLLOW-UP TO GENERAL ASSEMBLY RESOLUTION 50/106: BUSINESS AND DEVELOPMENT

Letter dated 19 July 1996 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the text of the Inter-American Convention against Corruption,** signed by 21 countries in the hemisphere on the occasion of the Specialized Conference of the Organization of American States against Corruption, held from 27 to 29 March 1996 in Caracas, Venezuela.

I should appreciate it if you would have the said text circulated as an official document of the Economic and Social Council under agenda item 6 (i) (Business and development).

(Signed) Enrique TEJERA PARIS
Permanent Representative

* E/1996/93.

** The attachment is circulated in the languages of submission only.

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INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Preamble

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONVINCED that corruption undermines the legitimacy of public institutions and strikes at society, moral order, and justice, as well as at the comprehensive development of peoples;

CONSIDERING that representative democracy, an essential condition for stability, peace, and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public duties, as well as acts of corruption specifically related to such performance;

PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration, and damage to a society's moral fiber;

RECOGNIZING that corruption is often a tool used by organized crime for the accomplishment of its purposes;

CONVINCED of the importance of making people in the countries of the region aware of this problem and its gravity, and of the need to strengthen participation by civil society in preventing and fighting corruption;

RECOGNIZING that, in some cases, corruption has international dimensions, which requires coordinated action by States to fight it effectively;

CONVINCED of the need for prompt adoption of an international instrument to promote and facilitate international cooperation in fighting corruption and, especially, in taking appropriate action against persons who commit acts of corruption in the performance of public duties, or acts specifically related to such performance, as well as appropriate measures with respect to the proceeds of such acts;

BEARING IN MIND that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective; and

DETERMINED to make every effort to prevent, detect, punish, and eradicate corruption in the performance of public functions or acts of corruption specifically related to such performance,

HAVE AGREED

to adopt the following

INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Article I

Definitions

For the purposes of this Convention:

"Public function" means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or under its direction, control, and authority. The term "State" comprises the national, provincial, regional, local, and municipal levels and their agencies.

"Government official" means any person who has been selected, appointed, or elected and who performs public functions on a permanent or temporary basis.

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

Article II

Purposes

The purposes of the Convention are:

1. To promote, facilitate, and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish, and eradicate acts of corruption in the performance of public functions and in acts of corruption specifically related to such performance, and

2. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish, and eradicate corruption.

Article III

Preventive Measures

For the purposes set forth in Article II of the Convention, the States Parties agree to consider the applicability of measures within their own institutional systems, which would create, maintain, and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of government functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials

in the performance of their functions. They shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of civil servants and government processes.

2. Mechanisms to enforce these standards.

3. Instruction to personnel hired by government agencies to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

4. Systems for registering the assets and income of persons who perform public functions in certain posts specified by law, and, where appropriate, for making the registration of such assets and income public.

5. Systems of government hiring and government procurement of goods and services that assure the openness, equity, and efficiency of such systems.

6. Government revenue collection and control systems that ensure that such activities deter corruption.

7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.

8. Systems for protecting public employees and private citizens who, in good faith, report acts of corruption, including protection of their identities.

9. To establish and strengthen the highest oversight bodies of each State Party with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts.

10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officials to detect corrupt acts.

11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.

12. Mechanisms for studying further preventive measures, such as the relationship between equitable compensation and probity in public service.

Article IV

Scope

This Convention is applicable as long as the alleged act of corruption has been committed or has effect in a State Party.

Article V

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.

4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a Party under its domestic law.

Article VI

Acts of Corruption

1. This Convention is applicable to the following acts of corruption:

a. The solicitation or the acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise, or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions of any article of monetary value, or other benefit, such as a gift, favor, promise, or advantage for himself or for another person or entity in exchange for any act or omission in the performance of his public functions;

c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of obtaining illicit benefits for himself or for a third party;

d. The fraudulent use or concealment of property derived from any of the acts referred to in this article;

e. Participation as a principal, coprincipal, instigator, accomplice, or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article;

2. Any other act of corruption defined by the States Parties in accordance with the purposes of this Convention.

Article VII

Domestic Law

The States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the acts of corruption described in Article VI and to facilitate cooperation among themselves, pursuant to this Convention.

Article VIII

Transnational Bribery

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly by its nationals, persons

having their habitual residence in its territory, and businesses domiciled there to an official of another State of any article of monetary value, or other benefit or advantage, (such as gifts, favors, or promises), in connection with any international economic or commercial transaction and in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as a crime, such offense shall be considered an act of corruption for the purposes of this Convention.

Insofar as their laws permit, the States Parties shall provide the necessary cooperation and assistance in connection with this offense, as provided in this Convention.

Article IX

Illicit Enrichment

Subject to their Constitutions and the fundamental principles of their legal systems, those States Parties that have not yet done so shall take the necessary measures to establish under their laws as an offense a significant increase in the property of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Insofar as their laws permit, the States Parties shall provide, in connection with this offense, the assistance and cooperation established in this Convention.

Article X

Progressive Development

Subject to their Constitution and the fundamental principles of their legal systems, those States Parties that have not yet done so shall endeavor to adopt the necessary measures to establish as offenses under their laws the following acts:

1. Undue use, for a person's own benefit or that of a third party, of any kind of classified or confidential information which a government official or a person who performs public functions has obtained because of, or in the performance of, his functions.

2. Undue use, for a person's own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has an interest, to which a government official or person who performs public functions has access because of, or in the performance of, his functions.

3. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he

obtains for himself, or for another person, any unlawful benefit, whether or not it harms State property.

4. The diversion by a government official for purposes unrelated to those for which they were intended, for one's own benefit or that of third parties, of any movable or immovable property, monies or securities belonging to the State, to a decentralized agency, or to an individual, that he may have received by virtue of his position for purposes of administration or custody or for other reasons.

Article XI

Impact on Property

For application of this Convention, it is not necessary that these acts of corruption harm State property.

Article XII

Extradition

1. This article shall apply to the offenses established by the States Parties in accordance with this Convention.

2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between or among the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.

6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

7. For the purposes of application of this Convention, the fact that the property derived from an act of corruption was intended for political purposes or that it is alleged that an act of corruption was committed for political motives or purposes shall not suffice in and of itself to qualify the act as a political offense or as an offense related to a political offense.

8. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take a person whose extradition is sought and who is present in its territory into custody, or take other appropriate measures to ensure his presence at extradition proceedings.

Article XIII

Assistance and Cooperation

1. In keeping with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in accordance with their domestic laws, have the power to investigate or prosecute the acts of corruption cited in Article VI, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption.

2. The States Parties shall also provide each other the widest measure of mutual technical cooperation on the most effective ways and means of preventing, investigating, and punishing acts of corruption. To that end, they shall foster exchanges of experiences by way of agreements and

meetings between competent bodies and institutions, and shall pay special attention to methods and procedures of citizen participation in the fight against corruption.

Article XIV

Measures regarding Property

1. In accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, the Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure, and forfeiture of property or proceeds obtained or derived from or used in the commission of offenses established in accordance with this Convention.

2. A Party that enforces its own or another Party's forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the property or proceeds in accordance with its laws. To the extent permitted by a Party's laws and upon such terms as it deems appropriate, that Party may transfer all or part of such property or proceeds to another Party that assisted in the underlying investigation or proceedings.

Article XV

Bank Secrecy

1. The Requested State shall not invoke bank secrecy in order to refuse to provide the assistance sought by the Requesting State. A Requested State shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements concluded with the Requesting State.

2. The Requesting State undertakes not to use any information which it receives and which is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.

Article XVI

Central Authority

1. For the purposes of international assistance and cooperation provided under this Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements.

2. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.

3. The central authorities shall communicate with each other directly for all the purposes of this Convention.

Article XVII

Other agreements or practices

No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice, provided that such cooperation yields more effective fulfillment of the aims set forth in Article II of this Convention.

Final Clauses

Article XVIII

This Convention is open for signature by the Member States of the Organization of American States.

Article XIX

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article XX

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article XXI

The States Parties may, at the time of adoption, signature, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of this Convention.

Article XXII

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the Convention after the

deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article XXIII

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

Article XXIV

Additional Protocols

Any State Party may submit, for the consideration of other State Parties meeting on the occasion of the General Assembly of the Organization of American States, draft additional protocols to this Convention to contribute to attainment of the purposes set forth in Article II thereof.

Each additional protocol must establish the modalities for its entry into force and shall apply only to the States Parties to it.

Article XXV

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify its Member States and the States that have acceded to the Convention of signatures, of the deposit of instruments of ratification, accession, or denunciation, and of reservations, if any.